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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA**

In re:
USA COMMERCIAL MORTGAGE COMPANY,

Debtor.

In re:
USA CAPITAL REALTY ADVISORS, LLC,

Debtor.

In re:
USA CAPITAL DIVERSIFIED TRUST DEED FUND,
LLC,

Debtor.

In re:
USA CAPITAL FIRST TRUST DEED FUND, LLC,

Debtor.

In re:
USA SECURITIES, LLC,

Debtor.

Affects:
☐ All Debtors
☐ USA Commercial Mortgage Company
☐ USA Capital Realty Advisors, LLC
☒ USA Capital Diversified Trust Deed Fund, LLC
☐ USA Capital First Trust Deed Fund, LLC
☐ USA Securities, LLC

USA CAPITAL DIVERSIFIED TRUST DEED FUND,
LLC

Plaintiff,

v.

KATHRYN L. PETERSEN, individually and as
TRUSTEE of the KATHRYN L. PETERSEN LIVING
TRUST and TRUSTEE of the KLP TRUST DTD 7/15/99
and SPECIALIZED DEVELOPMENT TAHOE, LLC,

Defendants.

Case Nos.:
BK-S-06-10725-LBR
BK-S-06-10726-LBR
BK-S-06-10727-LBR
BK-S-06-10728-LBR
BK-S-06-10729-LBR

JOINTLY ADMINISTERED
Chapter 11 Cases

Judge Linda B. Riegler

Adversary No. 08-___

**USA CAPITAL DIVERSIFIED
TRUST DEED FUND, LLC'S
ORIGINAL COMPLAINT**

Hearing Date: n/a
Hearing Time: n/a

1 Plaintiff USA Capital Diversified Trust Deed Fund, LLC (“DTDF”), hereby complains as
2 follows:

3
4 **I. NATURE OF THIS ACTION**

5 1. In April 2006, USA Commercial Mortgage Company (“USACM”), USA Capital
6 Diversified Trust Deed Fund, LLC (“DTDF”), and certain related entities were forced to file for
7 bankruptcy protection as a result of the gross misconduct by certain insiders, namely Thomas A.
8 Hantges (“Hantges”) and Joseph D. Milanowski (“Milanowski”) (collectively, the “Culpable
9 Insiders”). Among other wrongful conduct, the Culpable Insiders systematically looted USACM
10 and DTDF to fund USA Investment Partners, LLC (“USAIP”), an entity that functioned as their
11 personal “piggy bank”, as well as other entities in which they stood to reap substantial personal
12 profits.
13

14
15 2. In the aggregate, the Culpable Insiders misappropriated tens of millions of dollars
16 from USACM and DTDF in order: (a) to fund the negative cash flow operations of USAIP and its
17 vast network of affiliated entities; and (b) to pay USAIP’s obligations to third parties. In this
18 adversary proceeding, Plaintiff seeks to recover \$700,000 that the Culpable Insiders
19 misappropriated from DTDF and transferred to the Defendants in furtherance of their scheme.
20

21 **II. JURISDICTION / VENUE**

22 3. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C.
23 §§ 157 and 1334(b) in that this action arises under, arises in, and/or relates to this bankruptcy case.
24

25 4. This action is a core proceeding under 28 U.S.C. § 157(b)(2)(A), (H), and (O).

26 5. This is an adversary proceeding pursuant to Fed. R. Bankr. P. 7001.

6. The Defendants are subject to personal jurisdiction in this Court.

10. Defendant Specialized Development Tahoe, LLC (“Specialized Development”) is a Nevada limited liability company with its principal place of business in Nevada. Defendant Specialized Development can be served through its registered agent, Kurt A. Johnson, esq. at 7881 W. Charleston Blvd., Suite 220, Las Vegas, Nevada 89117. Upon information and belief, Defendant Specialized Development was managed by Petersen.

11. Petersen and Specialized Development shall be referred to collectively herein as “Defendants.”

IV. FACTUAL ALLEGATIONS

A. **BACKGROUND OF USACM, DTDF, AND THEIR DEMISE**

12. In April 2006, USACM and certain related companies collapsed due to the fraud perpetrated on them by Culpable Insiders. Beginning as early as 1997, the Culpable Insiders employed a pervasive “Ponzi”-like scheme that enabled them to loot and/or misappropriate tens of millions of dollars from USACM and DTDF. As a result of these wrongful activities, USACM was insolvent at least as early as December 31, 2001, if not earlier. Eventually USACM and DTDF (the “Debtor”) filed for relief under Chapter 11 of the Bankruptcy Code on April 13, 2006 (the “Petition Date”).

13. USACM was a mortgage broker and loan servicing company whose primary business activities were: (a) “originating” short-term loans from investors to real estate developers; and (b) servicing the loans that it originated by collecting principal and interest from borrowers and distributing those payments to the investors. USACM earned revenue by charging various fees for these services, including origination, servicing, and extension fees, although these fees often went uncollected.

1 14. A significant portion of the fee revenues that USACM actually received was
2 subsequently misappropriated by the Culpable Insiders. Specifically, the Culpable Insiders
3 misappropriated USACM's money to fund entities in which they held an indirect ownership interest
4 through USAIP, including time-share hotels, real estate development entities, and technology
5 companies. The Culpable Insiders often earmarked USACM funds and used USAIP as a conduit
6 for fraudulently transferring these funds to such entities. In other instances, the Culpable Insiders
7 caused USACM to directly transfer funds to entities in which USAIP and the Culpable Insiders had
8 an interest. In the aggregate, the Culpable Insiders misappropriated tens of millions of dollars from
9 USACM to fund their outside business ventures.
10

11 15. In addition, the Culpable Insiders caused USACM to make scores of other payments
12 for which it received no benefit and for which it had no underlying obligation. Routinely, the
13 Culpable Insiders commingled USACM's operating funds with funds held in the USA Commercial
14 Mortgage Company Collection Trust Account ("Collections Account") and other funds to make
15 regular interest and principal payments to investors in non-performing loans. These payments were
16 made to conceal delinquent and defaulted loans from other USACM directors, officers, employees,
17 shareholders, as well as the investors and regulatory authorities. In turn, this induced existing
18 investors to maintain or increase their investments with USACM and enticed new investors to
19 entrust their money to USACM, thereby providing the Culpable Insiders with liquidity to fund their
20 scheme, and thus, future sources of funds to loot from USACM.
21

22 16. Ultimately, USACM lost millions of dollars by making principal and interest
23 payments on loan obligations that it did not owe on behalf of defaulting borrowers. USACM did
24
25
26

1 not receive any benefit from making these “pre-payments” of interest and principal. Rather, such
2 payments were expressly forbidden by Nevada law, including NRS 645B.250.

3 17. To provide additional sources of funds to fuel this “Ponzi”-like scheme, the Culpable
4 Insiders adopted a “fund” business model with the creation of DTDF and USA Capital First Trust
5 Deed Fund, LLC (“FTDF”) in February 2000 and February 2001, respectively. Under the “fund”
6 model, investors purchased interests in DTDF and/or FTDF, which then acted as lenders in loans
7 originated and serviced by USACM.
8

9 18. Beginning at least as early as 2002 and continuing until the Petition Date, the
10 Culpable Insiders created liquidity in the Collections Account by failing to remit principal payments
11 to DTDF when the loan(s) that it had invested in were repaid. In such situations, Victoria Loob
12 (“Loob”) took physical possession of checks payable to DTDF and simply stuffed them in her desk
13 drawer. Internally, the Culpable Insiders referred to the unremitted principal to DTDF as the “held
14 checks.” As of the Petition Date, the outstanding balance of the held checks was at least \$18.9
15 million.
16

17 19. The Culpable Insiders also transferred funds directly from DTDF to the Collections
18 Account to cover shortfalls. For example, the Culpable Insiders transferred \$11.425 million from
19 DTDF into the Collections Trust in January 2003. These transfers were in direct violation of
20 Nevada law and DTDF’s Prospectus, dated June 2, 2003.¹
21
22
23

24 ¹ According to the DTDF Prospectus: (i) USACM had sold \$121,524,500 worth of units in the Fund prior to June 2, 2003; (ii)
25 investors were not offered a fixed rate of return but rather a “flow-through” of the profits generated by DTDF through DTDF acting as
26 a Direct Lender in loans generated by USACM; (iii) DTDF would only invest in loans secured by first deeds of trust upon real
property; (iv) loan-to-value ratios for the loans in which DTDF would become a Direct Lender would not exceed 75% and may be as
low as 60%; and (v) loan diversification restrictions would be imposed upon the loans invested by DTDF such that no loan would
exceed \$20 million, no loan would exceed 15% of all loans outstanding at any time, and no more than 25% of the loans outstanding at
any time would be made to a single borrower or an affiliate of such borrower.

1 20. The Culpable Insiders also systematically used DTDF as a vehicle to take certain,
2 preferred investors out of non-performing loans. In these situations, the Culpable Insiders caused
3 DTDF to pay in cash the full face value of the preferred investors' beneficial interests in these
4 distressed loans in exchange for assignments of the beneficial interests. In many cases, the
5 beneficial interests DTDF received through these assignments were only worth pennies on the
6 dollar. In countless examples, the preferred lenders recouped their entire investment while DTDF
7 was left with nothing more than an interest in a worthless investment. The Culpable Insiders
8 ultimately used DTDF to make tens of millions of dollars of such assignments, causing tens of
9 millions of dollars in losses for DTDF.
10

11
12 21. In addition to abusing DTDF to fuel their "Ponzi"-like scheme, the Culpable Insiders
13 regularly looted funds from DTDF to fund entities in which they held an indirect ownership interest
14 through USAIP, including time-share hotels, real estate development entities, and technology
15 companies. In addition, the Culpable Insiders looted DTDF to pay obligations that USAIP owed to
16 third parties.
17

18 22. To conceal these abuses, the Culpable Insiders fabricated a sham loan to 10-90, Inc.
19 ("10-90"). Although 10-90 was not even created until December 31, 2002, the Culpable Insiders
20 booked much of their 2002 looting of DTDF as advances on the sham loan to 10-90. From January
21 2003 onward, the Culpable Insiders continued to loot tens of millions of dollars from DTDF,
22 ultimately booking more than \$55 million of looting as advances on the loan to 10-90.
23

24 **B. TRANSFERS FROM DTDF TO DEFENDANTS**

25 23. In order to provide additional liquidity to perpetuate their fraudulent scheme, the
26 Culpable Insiders established a "short term note" program for investors to lend money directly to

1 USACM as the borrower. Upon information and belief, the short term notes typically matured in
2 sixty to ninety days.

3 24. Defendant Petersen invested \$700,000 in USACM's short term note program (the
4 "Kathryn Petersen Note").
5

6 25. The Culpable Insiders caused DTDF to wire transfer \$510,000 to Nevada Title
7 Company to a depository escrow account "fbo: Kathy Petersen" on July 23, 2002 (the "Depository
8 Escrow Transfer"). Upon information and belief, Nevada Title Company transferred the \$510,000
9 to Defendant Petersen.
10

11 26. On the same day, the Culpable Insiders caused DTDF to wire transfer \$190,000 to
12 Specialized Development, "FBO Kathy Petersen" (the "Specialized Development Transfer").
13 Upon information and belief, Specialized Development transferred the \$190,000 to Defendant
14 Petersen or received such funds as some form of investment or capital contribution on her behalf.
15

16 27. The Depository Escrow Transfer and the Specialized Development Transfer shall be
17 collectively referred to herein as the "Transfers."
18

19 28. The Culpable Insiders caused the Transfers to be made for the purpose of repaying
20 USACM's obligation to Defendant on the Kathryn Petersen Note. DTDF had no obligation
21 whatsoever to repay this obligation nor did it receive any benefit for doing so.

22 29. Petersen knew or should have known that DTDF had absolutely no obligation
23 whatsoever to repay any portion of the Kathryn Petersen Note. Upon information and belief DTDF
24 was not a party to any of the loan documents. Nor had DTDF guaranteed the loan or provided any
25 other security in connection with the loan. Petersen knew or should have known that DTDF, an
26

1 entity that solely functioned as a lender, would not stand to benefit in any way from re-paying the
2 Kathryn Petersen Note.

3 30. In addition, Petersen knew or should have known that the Transfers were made with
4 the actual intent to defraud DTDF and its creditors. DTDF had no obligation to make these
5 payments and did not receive any benefit from making the Transfers.
6

7 31. The Transfers were a blatant misuse of DTDF funds under the terms of the DTDF
8 Prospectus. Upon information and belief, the Culpable Insiders caused the Transfers to be made
9 with the actual intent to defraud, hinder, or delay DTDF and its creditors. Specifically, in an effort
10 to conceal their egregious misconduct in causing the Transfers to be made, the Culpable Insiders
11 booked the transfers in DTDF's accounting records as advances on the sham loan to 10-90.
12

13 **V. CAUSES OF ACTION**

14 **FIRST CAUSE OF ACTION**
15 **(11 U.S.C. § 544 and NRS 112.180(1)(a))**

16 32. DTDF re-alleges and fully incorporates the allegations pleaded above as if fully set
17 forth herein.
18

19 33. The Transfers were of an interest of the Debtor in property.

20 34. The Transfers were made within the applicable four year period under NRS
21 112.180(1)(a).
22

23 35. On the date of the Transfers and the Petition Date, upon information and belief, there
24 were creditors with allowable unsecured claims who could have avoided the Transfers pursuant to
25 Nevada state law.
26

1 Defendant Petersen as an immediate or mediate transferee who took such transfers without good
2 faith, without giving value, and with knowledge of the voidability of the Specialized Development
3 Transfers pursuant to § 550(a)(2) and NRS 112.220.
4

5 **THIRD CAUSE OF ACTION**
6 **(Unjust Enrichment)**

7 44. DTDF re-alleges and fully incorporates the allegations pleaded above as if fully set
8 forth herein.

9 45. By making the Transfers, DTDF conferred a benefit on Defendants.

10 46. Defendants appreciated the benefit in that they received the Transfers and knew or
11 should have known that such Transfers were part of the Culpable Insiders fraudulent scheme.
12

13 47. Defendants retained the \$700,000 they received from the Transfers under
14 circumstances that make retention of the money inequitable. Specifically, the Transfers were part of
15 the gross misconduct of the Culpable Insiders in looting DTDF for the benefit of themselves and
16 their personal “piggy bank,” USAIP.
17

18 **FOURTH CAUSE OF ACTION**
19 **(Money Had and Received)**

20 48. DTDF re-alleges and fully incorporates the allegations pleaded above as if fully set
21 forth herein.

22 49. Defendants received and/or possess \$700,000 from the Transfers.

23 50. DTDF is rightfully entitled to the money. The Transfers were made for Defendants’
24 benefit and were merely part of the Culpable Insiders’ systematic abuse of DTDF.
25

26 51. In good conscience and equity, Defendants have no right to maintain the \$700,000
they received in the Transfers. The Transfers were merely part of the gross misconduct of the

Culpable Insiders in looting DTDF for the benefit of themselves and their personal “piggy bank”,
USAIP.

VI. PRAYER FOR RELIEF

WHEREFORE, DTDF respectfully request that the Court enter judgment as follows:

- (a) Avoiding each of the Transfers;
- (b) Directing Defendants (respectively) to repay the value of the Transfers to DTDF;
- (c) Directing Defendants (respectively) to pay to DTDF all pre- and post-judgment interest on the Transfers at the maximum rate allowable by law and/or equity;
- (d) Directing Defendants (respectively) to pay DTDF’s costs of court;
- (e) Awarding DTDF such other relief that this Court deems just and proper.

Dated: April 12, 2008.

DIAMOND MCCARTHY LLP

LEWIS AND ROCA LLP

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